

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
UKI Communications	)	IC Nos. 02-S67936
	)	02-S73546
Complaints Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	
	)	
	)	
	)	

**ORDER**

**Adopted: November 7, 2002**

**Released: November 13, 2002**

By the Deputy Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaints<sup>1</sup> alleging that UKI Communications (UKI) changed Complainants' telecommunications service providers without obtaining authorization and verification from Complainants in violation of the Commission's rules.<sup>2</sup> We conclude that UKI's actions did result in an unauthorized change in Complainants' telecommunications service providers and we grant Complainants' complaints.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).<sup>3</sup> Section 258 prohibits the practice of

<sup>1</sup> See Appendix A.

<sup>2</sup> See 47 C.F.R. §§ 64.1100 – 64.1190.

<sup>3</sup> 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); *reconsideration pending*. Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture (continued....)

“slamming,” the submission or execution of an unauthorized change in a subscriber’s selection of a provider of telephone exchange service or telephone toll service.<sup>4</sup> In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.<sup>5</sup> Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.<sup>6</sup> Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130 authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.<sup>7</sup>

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.<sup>8</sup> Where the subscriber has paid charges to the unauthorized carrier, the Commission’s rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.<sup>9</sup>

4. We received Complainants’ complaints alleging that Complainant’s telecommunications services providers had been changed from their authorized carriers to UKI without Complainants’ authorization.<sup>10</sup> Pursuant to Sections 1.719 and 64.1150 of our rules,<sup>11</sup> we notified UKI of the complaints and UKI responded. UKI states that authorization was received

(Continued from previous page) \_\_\_\_\_

Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

<sup>4</sup> 47 U.S.C. § 258(a).

<sup>5</sup> See 47 C.F.R. § 64.1120(b).

<sup>6</sup> 47 U.S.C. § 258(a).

<sup>7</sup> See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

<sup>8</sup> See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

<sup>9</sup> See 47 C.F.R. §§ 64.1140, 64.1170.

<sup>10</sup> See Appendix A.

<sup>11</sup> 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

and confirmed through third party verifications. UKI's verifier, however, failed to confirm that the persons on the call wanted to make a carrier change, confirm the telephone numbers to be switched, and the types of services involved in the switch as required in our rules.<sup>12</sup> UKI has failed to produce clear and convincing evidence that Complainant authorized a carrier change.<sup>13</sup> Therefore, we find that UKI's actions resulted in an unauthorized change in Complainants' telecommunications service providers and we discuss UKI's liability below.<sup>14</sup>

5. Pursuant to Section 64.1170(b) our rules, UKI must forward to the authorized carriers an amount equal to 150% of all charges paid by the subscribers to UKI, along with copies of any telephone bills issued from UKI to the Complainants.<sup>15</sup> Within ten days of receipt of this amount, the authorized carriers shall provide a refund or credit to Complainants in the amount of 50% of all charges paid by Complainants to UKI. Complainants have the option of asking their authorized carrier to re-rate UKI's charges based on the authorized carrier's rates and, on behalf of Complainant, seek from UKI, any re-rated amount exceeding 50% of all charges paid by Complainant to UKI. The authorized carriers must also send a notice to the Commission, referencing this Order, stating that it has given a refund or credit to Complainant.<sup>16</sup> If the authorized carrier has not received the reimbursement required from UKI within 45 days of the release of this Order, the authorized carrier must notify the Commission and Complainant accordingly. The authorized carriers also must notify the Complainant of his or her right to pursue a claim against UKI for a refund of all charges paid to UKI.<sup>17</sup>

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaints filed against UKI ARE GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(b) of the Commission's rules, 47 C.F.R. § 64.1170(b), that UKI must forward to the authorized carriers an amount equal to 150% of all charges paid by the subscribers along with copies of any telephone bills issued from UKI to the Complainant within ten (10) days of the release of this order.

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<sup>12</sup> See 47 C.F.R. § 64.1120(c)(3)(iii).

<sup>13</sup> See 47 C.F.R. § 64.1150(d).

<sup>14</sup> If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

<sup>15</sup> *Id.*

<sup>16</sup> See 47 C.F.R. § 64.1170(c).

<sup>17</sup> See 47 C.F.R. § 64.1170(e).

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Margaret M. Egler, Deputy Chief  
Consumer & Governmental Affairs Bureau

## APPENDIX A

<u>INFORMAL COMPLAINT NUMBER</u>	<u>DATE OF COMPLAINT</u>	<u>DATE OF CARRIER RESPONSE</u>	<u>NAME OF AUTHORIZED CARRIER</u>
02-S67936	January 3, 2002	September 6, 2002	AT&T Corp.
02-S73546	January 26, 2002	October 2, 2002	AT&T Corp.